

2001

Valley Bank and Trust Company v. First Security Bank of Utah : Brief of Appellant

Utah Supreme Court

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TABLE OF CONTENTS

	Page
ARGUMENT	1
POINT I	
RESPONDENT FAILS TO CORRECTLY CITE THE LAW APPLYING TO COLLECTING BANKS. COLLECTING BANKS ARE REQUIRED TO GIVE WRITTEN NOTICE	1
POINT II	
RESPONDENT IGNORES A TWO YEAR DELAY IN CHARGE-BACK.	2
CONCLUSION	3

AUTHORITIES CITED

STATUTES

Utah Code Annotated 1953 as amended § 70A-1-201(38)	2
Utah Code Annotated 1953 as amended Title 70A Chapter 3	3
Utah Code Annotated 1953 as amended Title 70A Chapter 4	3
Utah Code Annotated 1953 as amended § 70A-4-202	1,2
Utah Code Annotated 1953 as amended § 70A-4-212	1,2

- (b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or directly to the depository bank under subsection (2) of section 70A-4-212 after learning that the item has not been paid or accepted, as the case may be; and..." (underlining added)

This Section which definitively sets forth the duty of the collecting bank requires that the item be returned or notice sent. The Commercial Code definition of "sending" requires a written notice. (70A-1-201(38))

The Respondent has claimed that the collecting bank is not bound by Section 70A-4-212. This Section (4-212) refers to "a collecting bank" and most certainly First Security was a collecting bank. Further, Section 70A-4-202 above cited, requires compliance with Section 70A-4-212 involving right of charge-back or refund, and therefore, the duty of the "collecting bank" is completely delineated and that bank must "return the item or send notification of the facts..." (Section 70A-4-212(1)).

The official comments cited in the Brief of the Respondent are not even comments on the appropriate section. This case is governed by subsection 1 which involves a "collecting bank".

Each section cited, as they affect an intermediary or collecting bank, requires the item be returned or notice sent and the definition of the word "send" in 70A-1-201(38) unequivocally requires writing.

POINT II

RESPONDENT IGNORES A TWO YEAR DELAY IN CHARGE-BACK.

Respondent, on Page 3 of its Brief, states:

"First Security was notified on September 8, 1970 that the item was being returned..."

Respondent then states that one day later:

"On September 9, 1970, First Security gave oral notice of dishonor to Valley Bank. First Security thereupon reversed the provisional credit given Valley Bank."

The statement that:

"First Security thereupon reversed the provisional credit..." is certainly not true. First Security did receive notice on September 8, 1970, but the facts are that it was not until on March 2, 1972, one year and six months later, First Security furnished written notice and on that date charged the account of Valley Bank and Trust Company (Exhibit 3P). This, most certainly, is not seasonable notice or seasonable charge-back.

CONCLUSION

The Commercial Code was purposely divided into two sections. Section 3 involves commercial paper in general.

Section 4 of the Commercial Code is entitled "Bank Deposits and Collections" and governs the conduct between banks. Banks by their very name and the fact that they are licensed and supervised, are presumed to know the law pertaining to bank deposits and collections. This law has been very carefully developed over the years. As among banks, written notice is required or the item must be returned as a condition precedent to charging the account of an associate bank. Since First Security failed in this very simple task, and did not return the item or charge the account of Valley until one year and six months after it received written notice, and, therefore, it is not allowed under the law to charge the account of Valley Bank and Trust Company.

Respectfully submitted,

BIELE, HASLAM & HATCH

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